

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHANTE MONIQUE JONES,

Petitioner,

vs.

CIVIL NO.: 04-CV-40238

CRIM. NO.: 01-CR-50005

UNITED STATES OF AMERICA,

HON. PAUL V. GADOLA

MAG. JUDGE WALLACE CAPEL, JR.

Respondent.

**ORDER RE “PETITIONER’S MOTION TO EXPAND DUE TO THE RECENT RULING  
IN UNITED STATES vs. BOOKER”**

This cause is before the Court on “Petitioner’s Motion to Expand Due to The Recent Ruling in United States vs. Booker,” filed on March 16, 2006. Petitioner is requesting to add a claim to his Motion to Vacate, pursuant to 28 U.S.C. § 2255, which was previously filed on August 19, 2004.

Claims that a sentence was imposed in violation of Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004), are now governed by the intervening decision in United States v. Booker, 534 U.S. 220, 125 S.Ct. 738 (2005), and are not retroactive. Humphress v. United States, 398 F.3d 855, 860 (6th Cir. 2005). Humphress argued that his sentence was imposed in violation of Blakely, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403, because the trial judge increased his sentence based on findings of fact made by the judge. In Booker, 534 U.S. at 244, which applied the Blakely reasoning to the Federal Sentencing Guidelines, the Court held that “[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury

beyond a reasonable doubt.” Id. at 756. The Court “conclude[s] that Booker’s rule does not apply retroactively in collateral proceedings.” Humphress, 398 F.3d at 860. Therefore, any argument regarding Blakely or Booker fails because neither is retroactive to the present case.

Therefore, “Petitioner’s Motion to Expand Due to The Recent Ruling in United States vs. Booker,” is **DENIED**.

**IT IS SO ORDERED.**

The parties are hereby informed that any objection to this Order must be filed with the district court within ten days after being served with a copy thereof, pursuant to Fed.R.Civ.P. 72(a).

s/Wallace Capel, Jr.  
**WALLACE CAPEL, JR**  
**UNITED STATES MAGISTRATE JUDGE**

**DATED:** March 24, 2006

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:  
James Mitchell,

and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s): Shantae Monique Jones, #28789-039.

s/James P. Peltier  
United States District Court  
Flint, Michigan 48502  
810-341-7850  
E-mail: pete\_peltier@mied.uscourts.gov